

Changes in the Finance Act, 1994 And Rules [Except Mega Exemption Notification, Negative List Changes And Cenvat Credit Rules, 2004 Changes]



One of the striking features of the Finance Bill, 2015 is that no amendment has been proposed with retrospective effect. On the contrary, the Finance Bill, 2015 also proposes some amendments to overcome many judicial pronouncements decided in favour of the assessee. Several minute changes are proposed in the Finance Act, 1994. Readers are, therefore, advised to carefully go through relevant statutory provisions, before giving advice to their clients or employers.

Proposed Changes in the Finance Act, 1994

A. Definitions- (Section 65B) [applicable from the date of enactment of the Finance Bill, 2015]

(1) Proposed definition of term "Government" to be inserted vide Section 65B (26A)



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"Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

It is worth highlighting that the above proposed definition does not include "Central Government". It is hoped that aforesaid inadvertent error gets corrected at the time of enactment of the Finance Bill, 2015.

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(2) Proposed substitution of Explanation 2 to definition of "Service"- Section 65B (44)

Explanation 2 to Section 65B(44) is proposed to be substituted with a view to provide that the expression "transaction in money or actionable claim" shall not, *inter alia*, include any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

- (a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;
- (b) by a foreman of chit fund for conducting or organising a chit in any manner.'

Simultaneously, an explanation is proposed to be inserted in Section 66D (i) to the effect that the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to Section 65B (44). Additionally, the definitions of the terms, "foremen of chit fund" and "lottery distributor or selling agent" are proposed to be inserted *vide* Section 65B (23A) and Section 65B (31A) respectively. Consequently, specified activities of a lottery distributor or selling agent and foreman of chit fund shall become taxable with effect from a notified date after enactment. It must also be borne in mind that abatement of 30% of the amount charged in respect of services provided in relation to chit [*vide* Notification No. 26/2012-ST dated 20.06.2012] has also been withdrawn *vide* Notification No. 08/2015-ST dated 01.03.2015 w.e.f. 01.04.2015. Therefore, specified activities of a foreman of a chit fund shall be taxable at the full rate.

B. General Rate of service tax proposed to be increased [applicable from the date to be notified after enactment]

(i) General rate of service tax to be increased to 14%

Section 66B is proposed to be amended by substituting the words "twelve per cent" with "fourteen per cent". Further, 'Education Cess' & 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of service tax of 14%.

(ii) Swachh Bharat Cess to be levied [Clause 117 of the Finance bill, 2015]

Swachh Bharat Cess [hereafter referred as 'SBC']

is proposed to be levied as service tax @ 2% on the value of all or any of the taxable services. Consequently, the effective rate of service tax in respect of those taxable services on which SBC is levied shall be 16%.

Firstly, the above-mentioned clause 117 is only an enabling provision. The Central Government may or may not levy SBC. Secondly, SBC has not been included in Rule 3(1) of CENVAT Credit Rules, 2004 which specifies duties, cess and taxes in respect of which CENVAT credit is allowed to be taken. Resultantly, no CENVAT credit can be claimed in respect of SBC. There shall be a cascading effect due to SBC.

C. Negative list of services- (Section 66D) [applicable from the date to be notified after enactment]

Since changes in Negative List of Services have been dealt in a separate article, the same have not been discussed here.

D. Principles of Interpretation of Specified Description of Services- (Section 66F) [applicable from the date of enactment]

Section 66F (1) prescribes that unless otherwise specified, reference to a service [referred as main service] shall not include reference to a service which is used *i.e.* input service for providing main service. With a view to clarify the scope of this section, the following illustration is proposed to be inserted.

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in Section 66D and hence, such service is leviable to service tax.

Swachh Bharat Cess [hereafter referred as 'SBC'] is proposed to be levied as service tax @ 2% on the value of all or any of the taxable services. Consequently, the effective rate of service tax in respect of those taxable services on which SBC is levied shall be 16%.

E. Valuation of taxable services for charging service tax- (Section 67) [applicable from the date of enactment]

Explanation (a) to Section 67 is proposed to be substituted with a view to bring the following within the ambit of term 'consideration':

- (i) All reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed.
- (ii) Any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

Thus, the above substituted explanation shall make all amounts charged by the service provider liable to service tax.

F. Recovery of service tax without issue of show cause notice – (Section 73) [applicable from the date of enactment]

- (i) Sub-Section (1B) is proposed to be inserted in Section 73 to provide that in a case where the amount of service tax payable has been self-assessed in the return furnished under Section 70(1), but not paid either in full or part, the same shall be recovered alongwith interest thereon in any of the modes specified in Section 87, without service of notice under Section 73(1). As a result of insertion of Section 73(1B), Rule 6(6A) Service Tax Rules 1994 shall be omitted.

In terms of Section 70 read with Rule 7(3) of STR, 1994 every assessee shall submit the return electronically. It is to be noted carefully that when admitted tax liability is not deposited (either fully or partially), the return of the assessee shall not be electronically accepted. Thus, The above-mentioned proposed Section 73(1B) is of no relevance.

- (ii) Section 73(4A) is proposed to be omitted. Section 73(4A) provides, amongst other things, that where during the course of any audit, investigation or verification it is found that any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded, but the true and complete details of the transactions are available in the specified

records, there shall be liability to pay reduced penalty equal to 1% of such tax for each month, for the period of default, subject to maximum of 25% of the tax amount.

G. Penalty for failure to pay Service Tax (Section 76) [applicable from the date of enactment]

The provisions relating to penalty in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with the intent to evade payment of service tax are proposed to be rationalised by substituting Section 76 in the following way:

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| (a) | There shall be a ceiling of 10% of service tax on penalty. It is pertinent to add here that with aforesaid proposed substitution, the dispute regarding minimum amount of penalty to be levied shall come to an end because no minimum penalty has been prescribed in proposed substituted Section 76. However, the negative side of substituted Section 76 is that it shall give rise to corruption. |
| (b) | No penalty shall be payable if such service tax and interest is paid within a period of 30 days of the date of service of notice under Section 73(1). |
| (c) | Reduced penalty of 25% of penalty amount [which effectively works out to be 2.5% of service tax amount <i>i.e.</i> Rs. 100 x 10% X 2.5%] shall be payable if such service tax and interest as well as reduced penalty is paid within a period of 30 days of receipt of order under Section 73(2). |
| (d) | In terms of proposed substituted Section 76(2), if service tax amount gets modified by Commissioner (Appeals) or Appellate Tribunal or Court, the amount of penalty payable on service tax shall also stand modified accordingly. However, the benefit of reduced penalty shall be available, if such modified service tax, interest and reduced penalty so payable is paid within 30 days from the date of receipt of such modified order. |

H. Penalty for suppressing the value of Taxable Services (Section 78) [applicable from the date of enactment]

The provisions relating to penalty in cases involving fraud or collusion or wilful mis-statement or

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suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with the intent to evade payment of service tax are proposed to be rationalised by substituting Section 78 in the following way:

(a)	Penalty shall be equal to 100% of such service tax amount.
(b)	Reduced penalty equal to 15% shall be payable if such service tax, interest and aforesaid reduced penalty is paid within a period of thirty days of the date of service of notice under the proviso to Section 73(1). Reduced penalty of 25% of penalty amount [which effectively works out to be 2.5% of service tax amount <i>i.e.</i> ₹100 x 10% X 2.5%] shall be payable if such service tax and interest as well as reduced penalty is paid within a period of 30 days of receipt of order under Section 73(2).
(c)	Reduced penalty equal to 25% shall be payable if such service tax, interest and aforesaid reduced penalty is paid within a period of thirty days of receipt of order under Section 73(2).and
(d)	In terms of proposed substituted Section 78(2), if service tax amount gets modified by Commissioner (Appeals) or Appellate Tribunal or Court, the amount of penalty payable on service tax shall also stand modified accordingly. However, the benefit of reduced penalty of 25% shall be available, if such modified service tax, interest and reduced penalty so payable is paid within 30 days from the date of receipt of such modified order.

Benefits of proposed substituted Section 78

1. Options to reduce penalty

(a) In case payment of defaulted service tax and interest thereon is made within 30 days of:-

Date of service of show cause notice[SCN] under <i>proviso</i> to Section 73(1)	The penalty shall be reduced to 15% of defaulted service tax if such reduced penalty is also paid within 30 days of service of SCN.
Date of receipt of adjudication order of Central Excise Officer under Section 73(2)	Penalty shall be reduced to 25% of defaulted service tax, if such reduced penalty is also paid within 30 days of receipt of adjudication order.

(b) If service tax amount gets modified by any

Appellate Authority *i.e.*, Commissioner (Appeals), Appellate Tribunal or Courts, in that case amount of penalty shall also get modified and benefit of reduced penalty shall be available if such modified service tax, interest thereon and reduced penalty is paid within 30 days from the date of receipt of such modified order.

Benefits proposed to be withdrawn under substituted Section 78

- Benefit of reduced penalty of 50% in case true and complete details of transactions are available in the specified records.
- In case of a service provider whose value of taxable services does not exceed ₹60 lakh either in any of periods covered by the notice or in the preceding financial year, time period of 90 days for availing the benefit of reduced penalty.

I. Insertion of Section 78B (transitory provisions) [applicable from the date of enactment]

Section 78B is proposed to be inserted to prescribe following transitory provisions:

- Provisions of Section 76 or Section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable where either no notice is served or notice is served under Section 73(1) or *proviso* thereto but no order has been issued under Section 73(2) before the date of enactment of the Finance Bill, 2015;
- In respect of cases falling under the provisions of Section 73(4A), where no notice has been served under the *proviso* to Section 73(1) or where aforesaid notice is served but no order has passed under Section 73(2) before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the service tax.

J. Proposed omission of Section 80 [applicable from the date of enactment]

The present Section 80 grants immunity from penalty leviable under Sections 76 and 77 is proposed to be omitted. However, in terms of many Supreme Court judgments penalty is not invoked automatically. The Department has to prove the mala fide intention of the part of the assessee. However, the assessee can take plea of bona fide belief.

K. Reducing burden of the Hon'ble Tribunals in order to expedite legal proceedings- (Section 86) [applicable from the date of enactment]

First *proviso* is proposed to inserted in Section

Sub-Section (1B) is proposed to be inserted in Section 73 to provide that in a case where the amount of service tax payable has been self-assessed in the return furnished under Section 70(1), but not paid either in full or part, the same shall be recovered along with interest thereon in any of the modes specified in Section 87, without service of notice under Section 73(1). As a result of insertion of Section 73(1B), Rule 6(6A) Service Tax Rules 1994 shall be omitted.

86(1) so as to provide that where the order passed by Commissioner (Appeals) is in relation to export of services and the question involved therein relates to grant of rebate of service tax on input services or rebate of duty on inputs, such matters shall be dealt in as per Section 35EE of the Central Excise Act, 1944 *i.e.*, the aforesaid types of matters shall be heard and decided by the Central Government u/s 35EE [Revision by Central Government].

The Second *proviso* is also proposed to be inserted in Section 86(1) so as to provide all appeals filed before the Appellate Tribunal in respect of the matters covered under the above first *proviso* after 28.05.2012 [date of enactment of the Finance Bill, 2012] *i.e.* w.e.f. 29.05.2012 and pending before it upto the date of enactment of the Finance Bill, 2015 shall also be transferred and dealt in accordance with Section 35EE.

L. Expansion in powers of Central Government- (Section 94) [applicable from the date of enactment]

Clause (aa) of Section 94(2) is proposed to be substituted. Presently, Central Government has powers to make rules in respect of "the determination of amount and value for taxable services under Section 67." However, after proposed substitution, Central Government shall have power to determine the circumstances in which an amount shall not be a consideration.

M. Resident firm made eligible to apply for 'advance ruling' - [Applicable w.e.f. 01.03.2015]

In exercise of powers conferred by Section 96A (b) (iii) the facility of Advance Ruling has been extended to 'resident firm'. It is pertinent to add here that in terms of Explanation (a) to Notification No. 09/2015-ST dated 01.03.2015 for the purposes of Advance Ruling the term "firm" shall have the meaning assigned to it in Section 4 of the Indian Partnership Act, 1932 (9 of 1932), and includes-

- (i) The limited liability partnership as defined in clause (n) of sub-Section (1) of the section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or
- (ii) Limited liability partnership which has no company as its partner; or
- (iii) The sole proprietorship; or
- (iv) One Person Company.

Changes in Service Tax Rules, 1994 [notification no. 5/2015-s.t. Dated 01.03.2015]

Following changes have been effected in Service Tax Rules, 1994:

A. Amendment in Rule 2

- (i) **Definition of term "aggregator" inserted [applicable w.e.f. 01.03.2015]**

Rule 2(1) (aa) has defined the term "aggregator" as under:

"aggregator" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator"

Example of an aggregator

Uber is an American international company headquartered in San Francisco. It develops markets and operates the mobile-app-based transportation network also called Uber. The Uber app allows consumers to submit a trip request, which is routed to crowd-sourced taxi drivers.

- (ii) **Definition of term "brand name or trade name" inserted [applicable w.e.f. 01.03.2015]**

Rule 2(1) (bca) has defined the term "brand name or trade name" as under:

"brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person"

It is added here that above the definition of "brand name or trade name" is the same definition which is given in Notification No. 33/2012-S.T. dated 20.06.2012 which deals with threshold exemption to small service provider.

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(iii) Services brought within the ambit of full reverse charge mechanism

Description of a service	Date from which reverse charge is applicable	Relevant rule of STR, 1994	Remarks
Services provided or agreed to be provided by a person involving an aggregator in any manner	01.03.2015	Rule 2(1) (d) (i) (AAA)	The onus of discharging service tax liability has been placed on the aggregator or the representative of the aggregator or the person appointed by the aggregator.
Services provided or agreed to be provided by Government or local authority excluding services specified in Section 66D(a)(i) to (iii) to any business entity located in the taxable territory	Date to be notified after enactment	Rule 2(1)(d)(E)	Presently, in terms of Rule 2(1) (d)(E) only support services (other than renting) and services specified in Section 66D(a)(i) to (iii) when provided or agreed to be provided by Government or a local authority to any business entity located in the taxable territory are subject to reverse charge.
Services provided or agreed to be provided by a mutual fund agent or distributor agent or distributor to a mutual fund or asset management company	01.04.2015	Rule 2(1) (d) (i) (EEA)	Exemption provided to these services <i>vide</i> Entry No. 29(d) & 29(e) of mega Exemption Notification No. 25/2012-ST dated 20.06.2012 has been withdrawn w.e.f. 01.04.2015.
Services provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent	01.04.2015	Rule 2(1) (d) (i) (EEB)	Exemption provided to these services <i>vide</i> Entry No. 29(e) of mega Exemption Notification No. 25/2012-ST dated 20.06.2012 has been withdrawn w.e.f. 01.04.2015.

B. Registration (Rule 4) [applicable w.e.f. 01.03.2015]

(i) Omission of sub-rule (1A) and insertion of sub-rule (9)

Sub-rule (1A) has been omitted. Further, following rule 4(9) has been inserted:

The registration granted under this rule shall be subject to such conditions, safeguards and procedure as may be specified by an order issued by the Board.

In exercise of foregoing powers, the Board has issued Order No. 01/2015-ST dated 28.02.2015 which provides, amongst other things, as under:

(a) That registration for single premises would be granted online within 2 days of filing completed application form in

ACES. Further, on grant of registration the applicant would also be enabled to electronically pay service tax.

(b) The applicant would not need a signed copy of the Registration Certificate as proof of registration.

The provisions relating to penalty in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or rules made thereunder with the intent to evade payment of service tax are proposed to be rationalised by substituting Section 76.



- (c) The application is required to submit a self-attested copy of the specified documents by registered post/speed post to the concerned Division, within 7 days of filing the Form ST-1 online, for the purposes of verification.

(ii) Digital signature (Insertion of Rule 4C) [applicable w.e.f. 01.03.2015]

Rule 4C has been inserted to provide for digitally signed invoices, bill or challan. The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices.

C. Accounts and records [Insertion of Rules 5(4) & 5(5) [applicable w.e.f. 01.03.2015]

Rule 5(3) has been inserted with a view to provide the option of maintaining records in electronic form and their authentication by means of a digital signature. Further, Rule 5(5) has been inserted to provide that the Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records.

D. Omission of Rule 6(6A) [applicable w.e.f. the date of enactment]

Rule 6(6A) shall be omitted consequent upon insertion of Section 73(1B).

E. Special Rates of service tax (Rule 6) [applicable w.e.f. date to be notified after enactment]

Consequent to increase in general rate of service tax, special rates of service tax given under Rule 6(7), Rule 6(7A), Rule 6(7B) and Rule 6(7C) have also been increased proportionately.

Conclusion

Several minute changes are proposed in the Finance Act, 1994. Readers are, therefore, advised to carefully go through relevant statutory provisions, before giving advice to their clients or employers. ■